

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C) .No. 28753 of 2006(W)

PETITIONER:

V.DAMODARAN, LECTURER IN COMPUTER
SCIENCE AND ENGINEERING, COCHIN UNIVERSITY
OF SCIENCE AND TECHNOLOGY, KALAMASSERY,
KOCHI-22, RESIDING AT UNIT NO.13,
TYPE II QUARTERS, KALAMASSERY.

BY ADV. SRI.LIFFY.P.FRANCIS

RESPONDENTS:

1. THE REGISTRAR,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
KALAMASSERY, KOCHI-22.
2. DEPUTY REGISTRAR,
CUSAT, KALAMASSERY, KOCHI-22.
3. VICE CHANCELLOR, COCHIN UNIVERSITY
OF SCIENCE AND TECHNOLOGY, KALAMASSERY,
KOCHI-22.

BY ADV. DR.K.P.SATHEESAN, SC COCHIN UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P (C) .No.28753/06.

APPENDIX

PETITIONER'S EXHIBITS:

- P1. COPY OF THE ORDER OF THE UNIVERSITY DTD.28.6.05.
- P2. COPY OF THE REPRESENTATION DTD.28.8.06.
- P3. COPY OF THE ORDER DTD.12.4.06 OF THE UNIVERSITY.
- P4. COPY OF THE LETTER DTD.22.9.06 OF THE UNIVERSITY.
- P5. COPY OF THE REPORT PUBLISHED NEW SUNDAY EXPRESS DTD.18.6.05.
- P6. COPY OF THE REPORT IN MALAYALA MANORAMA DTD.19.6.05.

RESPONDENTS' EXHIBITS:

Ext.R1 (A) . COPY OF THE LETTER DTD.26.5.05.

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P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.28753 of 2006

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Dated this the 16th day of October, 2007

J U D G M E N T

The petitioner is a Lecturer in Computer Science in the Department of Engineering in Cochin University of Science & Technology. He has been working as such from 27.4.2001. In March, 2005, he applied for study leave to undergo M.Tech. course. The petitioner contends that this was under the sponsored category, as per which the petitioner is entitled to full salary and allowances during the period of studies. The University has issued Ext.P1 order dated 28.6.2005 in which it is stated that teachers selected for M.Tech. will be provided facility to complete the programme within the University by creating supernumerary seats whenever required and that they would be given leave for one year with full pay and allowances. The petitioner submits that it is because of Ext.P1 that he has chosen to join M.Tech. Course and completed the course. He further

submits that upto the month of April, 2006 the petitioner was paid salary and allowances also. From May 2006 onwards the petitioner was declined salary. Thereafter, by Ext.P3 order dated 12.4.2006 his claim for salary and allowances for one year with effect from 10.8.2005, during which period the petitioner underwent M.Tech. Course, was rejected and he was granted Leave Without Allowances with effect from 10.8.2005 for undergoing M.Tech. Course as per Rule 91A of Part I of KSR. Subsequently, by Ext.P4 communication, the petitioner was directed to repay the salary and allowances drawn during part of the period of Leave Without Allowances in lump sum immediately. The petitioner is challenging Exts.P3 and P4 orders in this writ petition.

2. According to the petitioner, in view of Ext.P1, the petitioner is entitled to leave for undergoing M.Tech. Course with full pay and allowances and therefore, the petitioner should be given full pay for the balance period of study from May 2006, in addition to what has been paid and the amounts already paid cannot be recovered also.

3. The University has filed a counter affidavit in which

they categorically state that in the University two schemes are available for higher studies; one is by availing leave without allowances as per KSR and the other through Quality Improvement Programme. They further submit that for getting admission in the Quality Improvement Programme a candidate has to undergo rigorous selection procedures and even if they are selected they are permitted to undergo the programme, only on condition that they will be under leave without allowances, if the Ministry of Human Resources Development does not agree to reimburse their salary. The categoric assertion of the University is that the petitioner was granted permission under the Leave Without Allowances scheme and not under the Quality Improvement Programme. They therefore, denied the claim of the petitioner for salary and allowances for the period he was undergoing M.Tech. Studies. They also produced Ext.R1(a) communication from the Registrar to the Director of the Department by which the petitioner was sponsored for admission to M.Tech. course, wherein it is stated that the petitioner has been sponsored for M.Tech. on condition that if selected, the petitioner will have to avail leave without allowances for doing

M.Tech. and that there is no financial commitment in this regard to the University.

4. In answer to the same, the petitioner has come up with a case that although the petitioner was sponsored as per Ext.R1(a), in view of the fact that the same was under the Leave Without Allowances, the petitioner decided not to join M.Tech. and only because subsequently the University issued Ext.P1 that he has decided to join M.Tech. Course because, as per Ext.P1, he would be entitled to full pay and allowances.

5. The matter came up for hearing on 10.10.2007, on which date, the matter was argued in part. At that time this court entertained a doubt as to whether under the QIP, Lecturers are sponsored for M.Tech. also or whether in the Quality Improvement Programme, only Ph.D. Programmes only are contemplated. The learned Standing Counsel took time to get the information and accordingly it was posted to today. When the matter was taken up today, the learned Standing Counsel was not present at all, as a result of which, I was forced to dispose of this writ petition without the assistance from the counsel for the University.

6. The petitioner is claiming a benefit which is not usually granted to an employee of the University. Normally if an employee wants to go for higher studies, he has to avail of leave without allowances under the KSR or there must be a specific order by which, during the period of leave, pay and allowances are also granted. The petitioner is not able produce any document whatsoever which would go to show that the petitioner was granted leave for higher studies with full pay and allowances. There is a categoric assertion in the counter affidavit that the petitioner was granted permission under the Leave Without Allowances Scheme and not under the Quality Improvement Programme. The petitioner has not been able to satisfy me that Ext.P1 order of the University applies to the petitioner's case. Evidently, Ext.P1 relates to Quality Improvement Programme. There is no material before me to show that petitioner was sponsored under that programme. In fact the petitioner has not produced before me even an order by which leave has been sanctioned to him. Without an order, the petitioner could not have been relieved from his post. As such, the petitioner has miserably failed to prove his entitlement for pay and allowances

during the period of his higher studies. In the above circumstances, I am unable to countenance the claim of the petitioner in this writ petition and accordingly, the writ petition is dismissed.

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Sd/-
S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.